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Message Text

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ACTION NEA-10

INFO OCT-01 EUR-12 ISO-00 CIAE-00 DODE-00 PM-05 H-01
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P R 021144Z APR 78
FM AMEMBASSY ISLAMABAD
TO SECSTATE WASHDC PRIORITY 6542
INFO AMEMBASSY ANKARA
AMEMBASSY COLOMBO
AMEMBASSY DACCA
AMEMBASSY KABUL
AMCONSUL KARACHI
AMCONSUL LAHORE
AMEMBASSY LONDON
AMEMBASSY NEW DELHI
AMEMBASSY PARIS
AMEMBASSY TEHRAN
CINCPAC

C O N F I D E N T I A L 3212

CINCPAC FOR POLAD

E.O. 11652: NGDS
TAGS: PGOV, SHUM, PK
SUBJECT: SUPREME COURT SCHEDULES BHUTTO APPEAL FOR 6 MAY

REF: A) ISLAMABAD 3048 B) ISLAMABAD 3182

1. SUMMARY: A FIVE-JUDGE BENCH OF THE PAKISTAN SUPREME COURT, CHAIRED BY THE CHIEF JUSTICE, CONVENED IN RAWALPINDI APIRL 1 TO PERMIT APPEAL OF THE LAHORE HIGH COURT VERDIT IN THE MURDER/CONSPIRACY CASE OF FORMER PRIME MINISTER BHUTTO AND FOUR ACCOMPLICES. AFTER HEARING OPENING MOTIONS, STATEMENTS, AND EXPLANATIONS BY LAWYERS REPRESENTING CONFIDENTIAL

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THE STATE AND THE APPELLANTS, THE COURT SET SATURDAY, 6 MAY AS THE OPENING DATE FOR DAILY SITTINGS TO HEAR ARGUMENTATION. ACCORDING TO THE PRESS, THE COURT DIRECTED, MOREOVER, THAT "REASONABLE OPPORTUNITIES" BE PROVIDED FOR THE APPELLANTS TO CONSULT WITH THEIR LAWYERS BEFORE THAT TIME; THE COURT ORDERED THAT THE APPELLANTS BE BROUGHT TO RAWALPINDI ON 4 OR 5 MAY FOR THIS PURPOSE AS WELL.

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FINALLY, WHILE AGREEING TO THE REQUEST BY BHUTTO'S COUNSEL
FOR MORE TIME TO PREPARE HIS APPEAL, THE COURT REFUSED
TO INTERVENE--IN RESPONSE TO HIS PLEA--TO FAULT
THE PRESENT CONDITIONS OF BHUTTO'S CONFINEMENT.

2. WE WILL BE REPORTING EXTENSIVELY ON THIS APPEAL AS
IT PROCEEDS BECAUSE OF THE PRESS AND HUMAN RIGHTS ATTENTION
WE EXPECT IT WILL RECEIVE. END SUMMARY.

3. AT ITS SITTTING ON 1 APRIL TO HEAR THE FIRST ROUND
OF THE APPEAL IN THE BHUTTO MURDER/CONSPIRACY CONVICTION,
THE SUPREME COURT POSTPONED FURTHER SITTINGS UNTIL 6 MAY,
MAINLY TO SATISFY THE ARGUMENT BY YAHYA BAKHTIAR, BHTTO'S
VOLUBLE COUNSEL, THAT THE SEVEN DAYS PERMITTED BY THE
LAHORE HIGH COURT TO FILE AN APPEAL DID NOT PROVIDE HIM
THE TIME HE NEEDS FOR PRPEPARATION. HE CITED THE USUAL
APPEAL TIME OF UP TO THIRTY DAYS PERMITTED IN OTHER CASES;
HE FURTHER ALLEGED THAT INASMUCH AS HIS CLIENT "WAS
COMPELLED" TO BOYCOTT THE PROCEEDINGS OF THE TRIAL COURT,
HE (BAKHTIAR) DID NOT EVEN YET HAVE COPIES OF ALL THE
DOCUMENTS HE WOULD NEED TO PREPARE HIS APPEAL. BAKHTIAR
MADE THE POINT THAT HIS APPEAL WILL REST ON CONSTITUTIONAL
ISSUES, RATHER THAN COMING STRICTLY UNDER THE CRIMINAL
PROCEDURE CODE.

4. THE PROSECUTION TOLD THE COURT THAT ALL RECORDS OF
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THE TRIAL WILL BE AVAILABLE IN A FEW DAYS, THAT THEY WILL
BE GIVEN IN FULL TO BAKHTIAR AND HIS COLLEAGUES, AND THAT
BAKHTIAR IS OF COURSE, FREE TO ADD AS MANY GROUNDS OF
APPEAL AS HE LIKES.

5. BAKHTIAR THEN SHIFTED HIS FIRE TO THE CONDITIONS
OF BHUTTO'S PRESENT INCARCERATION. HE URGED THE COURT
TO INTERVENE TO RETURN BHUTTO TO THE "CLASS A" QUARTERS
HE HAD OCCUPIED DURING THE LONG TRIAL IN LAHORE. DESCRIBING
BHUTTO'S SHIFT WHAT HE CALLED THE "CONDEMNED PRISONERS"
CELLS AS A FORM OF PUNISHMENT FROM WHICH HE IS ALREADY
SUFFERING. HE CITED THE ABSENCE OF SEPARATE FLUSH TOILET AMENITIES
AND THE LACK OF FACILITIES FOR MEETING WITH COUNSEL.
COUNSEL FOR THE OTHER APPELLANTS INDICATED THEIR CLIENTS
HAVE EVEN MORE SPARTAN SURROUNDINGS. BAKHTIAR SAID
BHUTTO IS SUFFERING FROM FEVER (HE SUGGESTED A RESURGENCE
OF MALARIA).

6. CITING VARIOUS ADMINISTRATIVE AND PENAL REGULATIONS
BACK TO 1894, COUNSEL FOR THE STATE DESCRIBED BHUTTO'S
LODGINGS AS "CLASS B", HE DENIED THIS IS INTENDED TO
PUNISH THE FORMER PRIMIN WHILE THE APPEAL IS UNDERWAY AND

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DENIED AS WELL THAT THERE IS ANY SPECIAL CELL BLOCK
REFERRED TO AS "CONDEMNED PRISONERS' CELLS." HE SAID
THAT BHUTTO'S FORMER QUARTERS DO NOT MEET THE REQUIREMENTS
FOR INCARCERATION OF A CONDEMNED PRISONER. IF ANYTHING
HE ARGUED THE AUTHORITIES HAD USED THE MAXIUMUM DISCRETIONARY
AUTHORITY THEY HAVE TO ENSURE THAT BHUTTO'S ACCOMMODATION
REMAINS BETTER THAN THAT OF MOST PRISONERS CONVICTED OF
EQUIVALENT CRIMES. HE SATED THAT BHUTTO HAS THREE
ADJOINING CELLS, ONE FOR RESTING, ONE FOR COOKING, AND
ONE FOR BATHING, AND THAT THERE IS ALSO A COURTYARD AT
HIS DISPOSAL. HE HAS A CEILING FAN AND MOSQUITO NETTING,
ACCORDING TO THE PROSECUTION.

7. COMMENT: INTERESTING IN THIS ACCOUNT OF THE EXCHANGE
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BETWEEN COUNSELS, AS REPORTED BY THE PAKISTAN TIME, IS
THE ABSENCE OF THE WORST OF THE CHARGES SOME BHUTTO
SUPPORTERS ARE SPREADING, TO THE EFFECT THAT HE EITHER
HAS NO FURNITURE (READ BED) OR THAT HE IS CHAINED TO HIS
BED EACH NIGHT. WE ARE INCLINED TO DOUBT BOTH OF THESE.
WE ARE ALSO INCLINED NOT TO GIVE MUCH VALUE TO
BAKHTIAR'S REPORTED INCLUSION OF A REFERENCE TO BIRDS
FLYING INTO AND OUT OF BHUTTO'S CELL. PAKISTAN IS NOT
A COUNTRY NOTED FOR THE PREVALENCE OF SCREENS ON WINDOWS,
AND ANYONE WHO HAS EVER LIVED HERE KNOWS THAT BIRDS FLY
THROUGH MOST PUBLIC BUILDINGS ON A REGULAR BASIS.
BAKHTIAR'S USE OF THIS ILLUSTRATION SEEMS AIMED AT
APPEALING TO FOREIGN AUDIENCES, SINCE IT IMPLIES NO
SPECIAL HARDSHIP HERE. END COMMENT.

8. AT THE END OF THIS DISCUSSION BETWEEN OPPOSING COUNSEL,
THE CHIEF JUSTICE REPORTEDLY OBSERVED THAT THERE SEEMS
TO BE LITTLE ROOM FOR THE COURT TO INTERVENE IN THIS
MATTER. BHUTTO WAS CONVICTED, THE LAW HAS "TO TAKE ITS
COURSE," AND THERE IS LITTLE JUSTIFICATION FOR TREATING
HIM ANY DIFFERENTLY FROM ANY OTHER PERSON SENTENCED TO
DEATH BY A TRIAL COURT. THE COURT DID DIRECT, HOWEVER,
THAT "REASONABLE OPPORTUNITIES" BE PROVIDED BY JAIL
AUTHORITIES FOR CONSULTATION BY THE COUNSEL WITH THEIR
CLIENTS AND THAT THE PRISONERS BE BROUGHT TO RAWALPINDI
FOR THIS PURPOSE A DAY OR TWO BEFORE 6 MAY AS WELL.
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